



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

March 16, 2005

Mr. Christopher Coker
300 Artis Drive
Dover, DE 19904

RE: PLUS review – PLUS 2005-02-02; EZ Industrial Farms

Dear Mr. Coker:

Thank you for meeting with State agency planners on March 2, 2005, to discuss the proposed plans for the EZ Industrial Farms project to be located on Horse Pond Road in Dover.

According to the information received, you are seeking site plan approval for a recycling facility for concrete, asphalt and trees. According to the application, there are no proposed new buildings planned for this site.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as Kent County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

Executive Summary

The following section includes some site specific highlights from the agency comments found in this letter. This summary is provided for your convenience and reference. The full text of this letter represents the official state response to this project. ***Our office notes that the applicants are responsible for reading and responding to this letter and all comments contained within it in their entirety.***

State Strategies/Project Location

- This project is located in Investment Levels 3 and 4 according to the State Strategies for Policies and Spending. It is also located East of Route 1, and is situated in close proximity to Dover Air Force Base. The State is very concerned about the intended use of this property, and the potential for future expansion of the site and the use. The State supports any and all restrictions placed on this project to ensure that it complies with the County Codes and is compatible with the long term viability of Dover Air Force Base.

Planning Issues

- The application before PLUS was for the expansion of an existing recycling facility. It is not clear that the current use is in compliance with County Codes.
- The applicant was very unclear and evasive at the PLUS meeting regarding current use of the property and the intended use of the parcel in the future. The project will have to come back through the PLUS process for any expansion or use other than what was generically described on the application as a “recycling facility” and more specifically described at the meeting as recycling of bulk concrete and wood products without buildings or other improvements on the lot.
- The State is opposed to any expansion of this or any other industrial use beyond the 20 acres currently zoned for industrial use.

Natural and Cultural Resources

- The northeast boundary of the property backs onto Tyn Head Court (K-149), which is listed in the National Register of Historic Places. The SHPO would like to see a vegetative buffer along this boundary to screen the view of the recycling operation from the house.
- The applicant is strongly encouraged to maintain a 100-foot minimum buffer width from the landward edge of all delineated wetlands and/or watercourses (including ditches). In cases where natural buffer vegetation has been removed or reduced by past development or farming activities, the developer is encouraged to restore/establish to said buffer width or greater with native herbaceous and/or woody vegetation.
- A detailed sediment and stormwater management plan must be reviewed and approved by the Kent Conservation District prior to any land disturbing activity (i.e. clearing, grubbing, filling, grading, etc.) taking place.

- The Drainage Section requests that all precautions be taken to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water.
- The Drainage Section recommends a maintenance equipment buffer of 25' measured from the top of bank on the maintenance side, and a 10' setback buffer measured from top of bank on the non-maintenance side.

The following are a complete list of comments received by State agencies:

Office of State Planning Coordination – Contact: David Edgell 739-3090

This project is located in Investment Levels 3 and 4 according to the 2004 State Strategies for Policies and Spending. The frontage of the parcel is in Investment Level 3. It is understood that this area would continue to be used as an industrial use, and the frontage is also contained within Dover's certified plan as an annexation area. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. The bulk of the 20 acres is in Investment Level 4.

It is the State's policy to discourage new growth East of State Route 1. Starting with the historic Coastal Zone Act, State actions have encouraged natural resource and agricultural preservation rather than growth and development in this area of Kent County. Tens of millions of dollars have been spent by the State and Federal governments and by private conservation organizations to protect and preserve the natural environment and sustain a vibrant agricultural area that occupies some of the best farmland in the State. State investments East of Route 1 will be made for these purposes. No investment in infrastructure which supports growth is expected.

The State is very concerned about the intended use of this property, and the potential for future expansion of the site and the use. At the PLUS meeting the applicant was very unclear and evasive about the current and intended activity on the site. At times he described a bulk recycling operation involving concrete and wood products with all activity occurring outdoors and with no buildings proposed. Our office considers this use to be the subject of this application. At other times the applicant discussed his intentions to build roads and buildings for unspecified industrial uses. The applicant was also clear about his intentions to expand this use onto 100 – 300 additional acres adjacent to the site and to the east.

Our office would like to make the following points regarding this application, and the conflicting testimony given by the applicant at the PLUS meeting:

- The application before PLUS was for the expansion of an existing recycling facility. It is not clear that the current use is in compliance with County Codes.

This letter does not in any way validate compliance of the existing activities with relevant local codes and ordinances. Our office has no objections to any enforcement activities deemed necessary to bring the use into compliance with said codes and ordinances.

- The applicant was very unclear and evasive at the PLUS meeting regarding current use of the property and the intended use of the parcel in the future. The project will have to come back through the PLUS process for any expansion or use other than what was generically described on the application as a “recycling facility” and more specifically described at the meeting as recycling of bulk concrete and wood products without buildings or other improvements on the lot.
- Our office is very concerned about the impact this use may have on the viability of Dover Air Force Base. Due to the unclear testimony at the PLUS meeting it is difficult to determine the extent of the impact, but here is a list of our concerns:
 - The site may receive other types of solid waste in the future unless it is closely regulated. Such solid waste could attract birds, and represent a bird strike hazard. The recently resolved ESE relocation issue indicates that this is a serious matter that should be given the utmost attention during County proceedings.
 - Any future impervious surfaces or buildings on the site will certainly require some method of stormwater management. We know from past testimony that the base is adverse to wet stormwater management ponds due to the bird strike issue raised above.
- Our office is strongly opposed to any expansion of this use to lands other than the 20 acres currently zoned for industrial use. This is due to the reasons listed above, the site’s location East of State Route 1, the potential impact on Dover Air Force Base, and the encroachment into a viable agricultural area described by the Department of Agriculture as “highest value agricultural lands.”
- The State supports any and all restrictions placed on this project to ensure that it complies with the County Codes and is compatible with the long term viability of Dover Air Force Base.

State Historic Preservation Office (SHPO) – Contact: Alice Guerrant 739-5685

There is a known historic property on the site, a Victorian house (K-972). It is the understanding of the SHPO that the owner is rehabilitating this house and will be moving into it. Their architectural historians would be happy to discuss any questions about the rehabilitation with the owner. There are areas of high probability for prehistoric-period archaeological sites, but much of the area is already covered with debris being recycled, and it would be difficult to give the owner a definitive answer about whether any sites are

in fact there. There should also be archaeological remains associated with the house, but again, it would be very difficult to outline their extent.

The northeast boundary of the property backs onto Tyn Head Court (K-149), which is listed in the National Register of Historic Places. The SHPO would like to see a vegetative buffer along this boundary to screen the view of the recycling operation from the house.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

The subject land is bisected by a boundary between two Investment Levels in the Strategies for State Policies and Spending, such that the Horsepond Road frontage is in Level 3 and most of the rest is in Level 4. Therefore, expansion of the current use would be inconsistent with the Strategies for State Policies and Spending. For that reason, while DelDOT would not object to a conditional use approval to bring the front portion of the parcel into compliance, they are opposed to the operation being expanded into a high-value agricultural area.

The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-3091

Soils

According to the Kent County soil survey Sassafras, Matapeake, and Fallsington were mapped in the immediate vicinity of the proposed construction. Sassafras and Matapeake are well-drained upland soils that have few limitations for development. Fallsington is a poorly-drained wetland associated (**hydric**) soil that has severe limitations for development.

Wetlands

Upgrading the road to improve access to the back of the parcel may involve crossing a stream regulated by the State of Delaware. Contact the Division of Water Resources - Wetlands and Subaqueous Lands Section at (302) 739-4591 for a Jurisdictional Determination.

It is recommended that the Farm Services Agency of the USDA be contacted to assess whether the farmed wetlands on subject parcel meet the recognized criteria for classification as “prior converted wetlands.” Prior converted wetlands are farmed wetlands that have drained or altered before December 23, 1985, and no longer meet the wetland criteria established under the 404 program. Such wetlands are considered exempt from regulatory protection provided that there is no proof of a continuous “fallow period” of five years or greater in that parcel’s cropping history. Parcels converted after said date regardless of cropping history are considered jurisdictional by

the Army Corps of Engineers (ACOE). The contact person for assessing a parcel's cropping history is Sally Griffin at the USDA – she can be reached at 678-4182.

The applicant is strongly encouraged to maintain a 100-foot minimum buffer width from the landward edge of all delineated wetlands and/or watercourses (including ditches). In cases where natural buffer vegetation has been removed or reduced by past development or farming activities, the developer is encouraged to restore/establish to said buffer width or greater with native herbaceous and/or woody vegetation.

TMDLs

Although Total Maximum Daily Loads (TMDLs) as a “pollution runoff mitigation strategy” to reduce nutrient loading have not yet been developed for most of the tributaries or subwatersheds of the Delaware Bay watershed to date, work is continuing on their development. TMDLs for the Little River subwatershed, of which this parcel is part, are scheduled for completion in December 2006.

Therefore, until the specified TMDL reductions and pollution control strategies are adopted, it shall be incumbent upon the developer to employ best available technologies (BATs) and/or best management practices (BMPs) as “methodological mitigative strategies” to reduce degradative impacts associated with development.

Water Supply

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Potential Contamination Sources do exist in part of this area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. *In this case, there is a Underground Storage Tank site called Candy Lane located about 750' southwest of this project and a Hazardous Waste Generator site called Sunroc located about 900' northeast of this project.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-3665.

Sediment and Erosion Control/Stormwater Management

Requirements:

1. Land disturbing activities in excess of 5,000 square feet are regulated under the Delaware Sediment and Stormwater Regulations. A detailed sediment and stormwater management plan must be reviewed and approved by the Kent Conservation District prior to any land disturbing activity (i.e. clearing, grubbing, filling, grading, etc.) taking place. The review fee and a completed Application for a Detailed Plan are due at the time of plan submittal to the Kent Conservation District. Construction inspection fees based on developed area and stormwater facility maintenance inspection fees based on the number of stormwater facilities are due prior to the start of construction. Please refer to the fee schedule for those amounts.
2. The following notes must appear on the record plan:
 - The Kent Conservation District reserves the right to enter private property for purposes of periodic site inspection.
 - The Kent Conservation District reserves the right to add, modify, or delete any erosion or sediment control measure, as it deems necessary.
 - A clear statement of defined maintenance responsibility for stormwater management facilities must be provided on the Record Plan.
3. All drainage ways and storm drains should be contained within drainage easements and clearly shown on the plan to be recorded by Kent County.

Comments:

1. Based on the site characteristics, a pre-application meeting is suggested to discuss stormwater management and drainage for this site.
2. A letter of no objection to recordation will be provided once the detailed Sediment and Stormwater Management plan has been approved.

Drainage

The Drainage Section is aware of current drainage problems on Morgan Branch downstream from this project.

The Drainage Section requests that all precautions be taken to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water. The Drainage Section requests all existing ditches on the property be checked for function and cleaned if needed prior to the enlargement of the proposed site. Wetland permits may be required

before cleaning ditches. The Drainage Section requests the establishment of vegetated maintenance buffers along any ditch or swale on the property as described below.

The Drainage Section recommends a maintenance equipment buffer of 25' measured from the top of bank on the maintenance side, and a 10' setback buffer measured from top of bank on the non-maintenance side. These buffers should be maintained to aid in the reduction of sediment and nutrients entering into the drainage conveyance. Grasses, forbs and sedges planted within these buffers should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Trees and shrubs planted within the maintenance buffer should be native species, spaced to allow for mechanized drainage maintenance at maturity. Trees should not be planted within 5 feet of the top of ditch to avoid future blockages from roots.

The above-mentioned buffer widths are necessitated for the maintenance and/or reconstruction of drainage conveyances. For the further enhancement of water quality the Drainage Section encourages additional buffer widths on this project.

Underground Storage Tanks

There are three inactive LUST site(s) located near the proposed project:

Candy Lane, Facility # 1-000449, Project # K8912279

Bower's Sign - Bennington Bldg., Facility # 1-000582, Project # K9904071

Tilcon Delaware, Inc., Facility # 1-000057, Project # K8804012

No environmental impact is expected from the above inactive/active LUST site(s). However, should any underground storage tank or petroleum contaminated soil be discovered during construction the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would be need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel in the contaminated areas.

State Fire Marshal's Office – Contact: John Rossiter 739-4394

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

a. **Accessibility**

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all

buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Horsepond Road must be constructed so fire department apparatus may negotiate it.

- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

Plan submittal is not required unless structures of any kind are proposed.

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

Department of Agriculture - Contact: Mark Davis 739-4811

The Delaware Department of Agriculture and the Delaware Forest Service objects to this project as defined and presented as part of the PLUS process. Based upon a site visit, the parcel is currently being used for a construction debris and waste handling site. This use, at best, is a poor use. The Delaware Forest Service supports the efforts of the Office of State Planning and Coordination in working to remove the current use and developing alternate uses for this site that may meet the developer's objectives. In addition, the Department does not support growth or expansion of existing facilities east of SR1 located within Kent County. The area east of SR1 is a thriving agricultural community and includes tens of thousands of acres of permanently preserved farmland which represent a significant state investment.

Public Service Commission - Contact: Andrea Maucher 739-4247

This project is not in a certificated area. If water is requested from a private utility, that utility will need to apply to the Commission for a Certificate of Public Convenience and Necessity (CPCN).

If the project lies outside of the County's wastewater service territory as of October 2004, the County must update the information it filed with the Commission.

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

Delaware State Housing Authority – Contact Karen Horton 739-4263

No comment

Delaware Emergency Management Agency – Contact: Don Knox 659-3362

No significant impact to public safety is foreseen by implementation of this project.

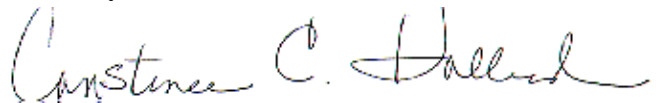
Delaware Economic Development Office – Contact: Dorrie Moore 739-4811

The Delaware Economic Development Office (DEDO) is not in favor of this project in a Level 4 area. Our office supports the *Delaware Strategies for State Policies and Spending* policy regarding Level 4 activities.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in blue ink that reads "Constance C. Holland". The signature is fluid and cursive, with the first name "Constance" being the most prominent.

Constance C. Holland, AICP
Director

CC: Kent County
City of Dover